

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II0

STATE OF WASHINGTON,

Respondent,

v.

CHARLES GERALD WEST,

Appellant.

No. 38485-0-II

UNPUBLISHED OPINION

Hunt, J. – Charles Gerald West appeals his sentence for his guilty plea conviction for third degree assault. He argues that the sentencing court exceeded its statutory authority by recording ten years as his maximum potential sentence on the Judgment and Sentence¹ because (1) the statutory maximum for this class C felony is only five years, RCW 9A.20.021(1)(c); and (2) if he served the full 43 months of confinement and 18 months of community custody, he would serve a total of 61 months, thus exceeding the 60-month (five years) statutory limit by one month. The State (1) concedes that the maximum sentence authorized for West’s conviction is five years, (2) asserts that the judgment and sentence’s reciting a 10–year maximum was a scrivener’s error, and (3) agrees that we should remand to the trial court to correct this error.

¹ Report of Proceedings (RP) (Oct. 1, 2008) at 2.3.

Accepting the State's concession and agreeing with West that his total potential sentence exceeds the statutory maximum, we remand for correction of these two sentencing errors.

FACTS

Charles West pleaded guilty to one count of third degree assault. It is undisputed that his offender score is 8, his standard sentencing range is 43-57 months, and the statutory maximum for this crime is five years. These facts are accurately reflected in West's statement on plea of guilty.

The sentencing court sentenced West to 43 months of confinement, followed by 9-18 months of community custody, for a potential maximum total of 61 months of punishment. And, unlike West's guilty plea statement, his judgment and sentence incorrectly recites that the statutory maximum for third degree assault is ten years. No one apparently caught these errors below.

West appeals his sentence.

analysis

West argues, and the State concedes, that the trial court erred when it recited ten years on the judgment and sentence as the statutory maximum sentence for West's third degree assault conviction. West also argues that because his total punishment, including imprisonment and community custody, may not exceed the five-year statutory maximum, his potential 61-month punishment term is erroneous.² We agree on both points.

A defendant may challenge an illegal or erroneous sentence for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P. 3d 678 (2008) (citing *State v. Ford*, 137 Wn. 2d 472,

² *State v. Sloan*, 121 Wn. App. 220, 87 P.3d 1214 (2004).

477, 973 P. 2d 452 (1999)). A trial court may impose a sentence only as authorized by statute. *In re Tobin*, 165 Wn.2d 172, 196 P.3d 670 (2008). Here, West's judgment and sentence contain two relatively minor errors that run afoul of the applicable statutory authorization.

First, the judgment and sentence erroneously recites 10 years as the maximum sentence for West's third degree assault charge, a class C felony, contrary to 9A.20.021(1)(c) and in violation of RCW 9.94A.505(5). The maximum sentence for this crime is five years. RCW 9A.20.021(1)(c). We accept the State's concession of scrivener's error on this point.

Second, because the sentencing court imposed 18 months as the upper limit of West's community custody, his total sentence could exceed the five-year (60 months) statutory maximum by one month if he were to serve all 18 months of community custody after serving 43 months of confinement—a total of 61 months.³ West's situation is analogous to that in the recent case of *State v. Linerud*, 147 Wn. App. 944, 197 P. 3d 1224 (2008): In *Linerud*, Division I of our court held that (1) a sentencing court has a duty to impose a determinate sentence within the statutory range to preclude the possibility of a sentence that exceeds the statutory maximum; and (2) a sentence continues to be indeterminate, potentially exceeding the statutory maximum, even where a judgment states that the total sentence shall not exceed the statutory maximum. *Id.* Similarly here, West's sentence continues to be indeterminate, potentially exceeding the five-year statutory maximum, by virtue of the 18-month maximum community custody term.

We remand for correction of these sentencing errors in West's judgment and sentence.

³ In contrast, if the sentencing court had imposed 9-17 months of community custody, following his 43 months of confinement, West's total sentence could not possibly exceed the statutory maximum of five years (60 months).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Houghton, P.J.

Quinn-Brintnall, J.